(1) 5

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR (C.G.)

WRIT PETITION NO. 1569 /2006 SINGLE BENCH

PETITIONERS

1. Sindhulal Prasad, aged about 44 years, son of Shri R.S. Prasad, resident at Sonadih (Rasedi), PO – Raseda, P.S. Baloda Bazar, District Raipur (C.G.)

2. Mahesh Mahato, aged about 43 years, son of Shri Birsai Mahato, resident of at Sonadih (Rasedi) PO Raseda, P.S. Baloda Bazar, Distt Raipur (C.G.)

3. Deepak Naidu, aged about 43 years, son of Shri Shankar Naidu, resident of – at Sonadih (Rasedi) P.O. Raseda P.S. Baloda Bazar, Distt. Raipur (C.G.)

4. Pitambar Sahu, aged about 46 years, son of B. Sahu, resident of at Sonadih (Rasedi) P.O. Raseda, P.S. Baloda Bazar, Distt. Raipur (C.G.)

5. Premlal Verma, aged about 50 years, son of Shri S.L. Verma, resident of at Sonadih (Rasedi) P.O. Raseda, P.S. Baloda Bazar, Distt. Raipur (C.G.)

P.R. No. 1614/06 Presented by Sindhulal Prasad Petitioner dated 29/3/06

RECEIVED-COPY 27/3/06 CLERK to A. G. BILASPUR

OATH COMMISSIONER APARNA MALVIYA CG-2073/96 Bilaspur Chhattisgarh

6. Govindram Agarwar, aged about 50 years, son of Late Shri Bechulal, resident of at Sonadih (Rasedi) P.O. Raseda, P.S. Baloda Bazar, Distt. Raipur (C.G.)

Authorized representatives of the Workmen of M/s. Tata Iron & Steel Company Limited, Sonadih, Cement Wing, Sonadih, Raipur (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh through – the Secretary, Department of Labour, Dau Kalyan Singh Bhawan, Chhattisgarh Secretariat, Raipur (Chhattisgarh).
2. The Labour Commissioner, State of Chhattisgarh, Department of Labour, District Bilaspur (C.G.)
3. The Deputy Labour Commissioner, Raipur, Distt. Raipur (C.G.)
4. The Labour Commissioner cum Conciliation Officer, Department of Labour At Post Raipur, Distt. Raipur (Chhattisgarh)

OATH COMMISSIONER ARADHNA CG-2073/95 Bilaspur Chhattisgarh

3.

7

5. M/s. Tata Iron & Steel Co. Ltd., represented through its Managing Director, 24, Homi Modi Street, Fort, Mumbai at present Tata Nagar, Jamshedpur Distt. Singhbhum East, Jharkhand.

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT / WRITS, ORDER / ORDERS, DIRECTION / DIRECTIONS IN THE NATURE OF MANDAMUS / CERTIORARY / PROHIBITION ETC.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

170

आदेश पत्रक

WP 1562/06

मामला क्रमांक ..... / सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21-4-2006

On a mention being made, this case is taken up.

Shri Das with Shri Abhijit Sarkar, counsel for the petitioners.

Shri Satish Gupta, Dy.G.A. for the State/respondents No.1 to 4.

None appears for respondent No.5.

Heard.

The petitioners have filed this petition under Article 226/227 of the Constitution of India praying for a direction to the respondents no. 1 and 2 to take appropriate action under Section 10 read with Section 12(5) of the Industrial Disputes Act, 1947 on the report of the Conciliation Officer-cum-Assistant labour Commissioner.

Counsel for the petitioner submitted that some employees of the different branches/department of M/s. TISCO were brought and posted at cement wing on transfer out of which some of them have been returned back to their parent places after completion of their work at Cement Wing and some of them including the petitioners and concerned workmen are continuing at present due to the requirement of their services at Cement Wing. It is submitted that Cement Wing is an integral part of M/s. TISCO Limited. It was not a separate undertaking. It is stated that on 1-11-1999 the management of Cement Wing has been brought to the management of M/s. Lafarge India Limited, the employees who were working in the cement wing brought to the notice of the respondent No. 5 to clarify their position with a request to return them back to their parent departments and places. Some employees have returned to their parent department. The petitioners requested to return them back to their parent department but the respondent

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

171

आदेश पत्रक

WP 1562/06

मामला क्रमांक ..... सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

No. 5 did not consider their request. The petitioners submitted representation as per Annexure P-4 dated 17-1-2005 and after receipt, when the representation was not considered, the respondent No. 4 was requested to intervene in the matter for settlement. It is submitted that the respondent no. 4 invited the respondent no. 5 as well as the petitioners for amicable settlement by notice Annexure P-5. When respondent no. 5 did not cooperate, the respondent No. 4/Conciliation Officer-cum-Assistant Labour Commissioner initiated proceedings under Section 12 of the Industrial Disputes Act, 1947 and directed the respondent no. 5 as per Annexure P- 5 to participate in the conciliation proceedings. The respondent no. 5 after receiving the notice of Conciliation Officer did not appear and even not agreed to refer the dispute to the Arbitrator under Section 10 of the Industrial Disputes Act. Thereafter the petitioners submitted their written statements along with the relevant documents in support of their claims as per Annexure P-6 to respondent no. 4. It is submitted that the respondent no. 4 closed the conciliation proceedings as no settlement and submitted its report to the respondents No. 1 and 2 under Section 12 (4) of the Act. The respondent no. 2/Labour Commissioner directed as per Annexure P-7 the respondent no. 3/the Dy. Labour Commissioner to settle the dispute, who directed both the parties to appear before him. Pursuant to the notice of respondent no.3, the petitioners appeared before him and submitted written statement as per Annexure P-8. It is alleged that the respondent No. 5 did not cooperate and the proceedings ended in failure.

Counsel for the petitioners submits that the respondents no. 1 and 2 are competent to take decision by exercising their power vested under

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

172

आदेश पत्रक

मामला क्रमांक WP 1562/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Section 10 of the Act but no action has been taken. The petitioners have made representations but no action has been taken. Counsel for the petitioners further submitted that same and similar disputes between the workmen of the respondent no. 5 at Jajobera, Jameshedpur have been referred by the Jharkhand Government to the Industrial Tribunal as per Annexure P-9 and orders have been passed.

According to section 12(4), if no settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reason on account of which, in his opinion, a settlement could not be arrived at. According to Section 12(5), if, on a consideration of the report referred to in sub-section (40, the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. Counsel contended that when the proceedings ended in failure under Section 12(4) then under Section 12(5) of the Act, the case was referred.

Section 12(5) of the Industrial Disputes Act is relevant and reproduced hereinbelow:-

> ***"12. Duties of conciliation officers.—(5) If, on a consideration of the report referred in sub-section (4), the appropriate Government is satisfied that***

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

173

आदेश पत्रक

मामला क्रमांक WP 1562/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

there is a case for reference to a Board. Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

There is a force in the contention raised by the petitioners. The appropriate Government is required to act in conformity with sub-section (5) of Section 12 of the Industrial Disputes Act. If it is satisfied that there is a case for reference to the Board, Labour Court, Tribunal or National Tribunal, it should make a reference. Where, however, the appropriate Government considers it not worth to make such a reference it has to record reasons therefor and communicate to the parties concerned. As pointed out the matter is pending with the appropriate Government for a considerable time.

Under the circumstances, in the opinion of this Court, it is just and proper to issue a direction to the appropriate Government to take appropriate action in the matter in accordance with law within a period of one month from the date of receipt/production of a copy of this order and thereafter action taken report be submitted before the Additional Registrar (Judicial) of this Court.

Before parting, it is made clear that this Court is not expressing any opinion on the merits of the case.

In view of the directions and observations made above, the petition stands disposed of.

Certified copy as per rules.

Sd/-
Fakhruddin
Judge

P/Gowri

[पीछे देखिये

21/5/06